

## **REMARKS**

Claims 9 and 10 are rejected under 35 USC 103(a) as being unpatentable over Conway (U.S. 2,087,181).

Conway discloses a method of putting hair foil in a person's hair comprising removing a first sheet of hair foil from a pop-up dispenser, the sheet having a lead portion and a trailing portion with the lead portion extending through the dispensing orifice and the trailing portion overlapping the lead portion of the next hair foil sheet; and pulling the next hair foil sheet through the orifice of the dispensing orifice by withdrawing the first sheet; and applying the first sheet to a person's hair (see col. 1, line 36 through col. 2, line 14). Conway discloses the claimed invention except for the foil sheets having a width of 3.5-6 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to having the foil sheets 3.5 to 6 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art. In re Aller, 105 USPQ 233.

Conway relates to a dispensing container for housing interlock sheets in package form. The device is a portable device which may be clamped to a hair curler. Conway requires a spring to bear against a package of sheets. In fact, Leto describes the container of Conway as requiring spring means to force available sheets toward their respective discharge slots or openings. In Conway, the sheets must be loaded in the dispenser at the end opposite the discharge slot. Since hair treating solutions used in modern treatments attach

many required material. The clamps of Conway attach to a roller which is in contact with such solutions, and subject to wear and corrosion after repeated use.

Claims 9 and 10 are rejected under 35 USC 103(a) as being unpatentable over Leto (U.S. Patent 4,185,753).

Leto discloses a method of putting hair foil in a person's hair comprising removing a first sheet of hair foil from a pop-up dispenser, the sheet having a lead portion and a trailing portion with the lead portion extending through the dispensing orifice and the trailing portion overlapping the lead portion of the next hair foil sheet; and pulling the next hair foil sheet through the orifice of the dispensing orifice by withdrawing the first sheet; and applying the first sheet to a person's hair (see col. 4, lines 21-45 and figure 3). Leto discloses the claimed invention except for the foil sheets having a width of 3.5 to 6 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the foil sheets 3.5 to 6 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Leto relates to end wraps. End wraps are made from lightweight paper and are used in a perming process by which you curl the hair. The claims of the patent require a method of putting hair foil on a person's hair. Hair foil is used for a hair coloring procedure and not perming procedure, two distinctively

different hair services. The hair foil of the claims is 3.5-6 inches in width and when dispensed is approximately 11" long. This is significantly longer than an end wrap paper, having an average size of 3-4 in. width and 3-4 inches long.

Further, the foil of the present application is significantly heavier than the paper described in Leto. For example, it is realistic to place a small lightweight box of end wraps on your arm utilizing the device taught by Leto. A box of end wraps weighs only a few ounces. The same box of foil weighs approximately 1.5 pounds. It would not be feasible for one skilled in the art of hair coloring to wear such a heavy box of foil on their wrists/arms while performing a hair color service.

A ready to use piece of foil that is approximately 5" wide by 11" long is presently being sold in a box containing 500 sheets. Such a box has overall dimensions of approximately 5.5" wide, 5.75" long, and 4" tall. It is impractical to place a box of this size and this weight on the wrist of one skilled in the art of hair coloring without seriously compromising the final result or without risking injury to the colorist or their client.

Leto relates to a device for dispensing flexible sheets of absorbent paper or other fibrous material, which are end wraps. This is very different from the foil of the present invention.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e. the spring and the weight of the paper) are not recited in

the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Based on a telephone interview with the Examiner, the Examiner requested that I resubmit the arguments from the Response of October 11, 2007. All of those arguments are part of the present response. Further, as previously argued, since the claims have "consisting of" language, and the prior art references require the spraying and weight of the paper, the claims cannot be obvious over the prior art.

Applicant believes that the application is now in condition for allowance.

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Respectfully submitted,



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